

Proposed Section 22.165

The Commission Should Allow Form 489 Filings So That Licensee May Receive Interference Protection For New Facilities.

The Commission proposes to allow licensees to add new transmitters to existing systems without filing a Form 489. This proposed rule contains the same problems identified in Proposed Section 22.163. *See* p. 16-18 above.

In addition, the Commission must clarify the relationship between this section and Proposed Section 22.123. As drafted, the sections appear both contradictory and repetitive. For example, Section 22.165(e) allows a cellular licensee to expand within a market without filing a Form 489. Section 22.123(e)(2)(i)(A), in contrast would deem such as expansion to be a "major" amendment requiring the filing of a Form 401. The Commission should reexamine the relationship between these sections to insure that they are clear and achieve the Commission's stated goals in this proceeding.

Proposed Section 22.167

The Commission Should Clarify The Scope Of The Finder's Preference And Implement Procedures To Protect Existing Licensees.

The Commission proposes to adopt a "finders preference" which allows an entity to file an application to use spectrum that it "finds". In order to qualify for the finder's preference, the spectrum must be licensed, but not used to provide service to the public. While this section will help prevent the warehousing of spectrum, the Commission must implement a thorough review process to protect the rights of existing licensees.

First, the Commission must clearly define when spectrum is "used to provide service to the public". As discussed at p. 12-13 above, the Commission should deem as "used" any paging or radiotelephone facilities which are interconnected to the landline network and capable of providing service.

Second, the Commission must ensure that facilities with low traffic levels are not deemed "unused". Licensees cannot always control the level of traffic over their facilities. For example, a paging system may be "armed and ready", but if no page is sent to the customer, no broadcast is sent over the channel. Similarly, if the volume of cellular calls is low, the lowest ranked channels of a trunk configuration will contain no signals, despite the fact that the higher ranked channels are in use. In these circumstances, there is no justification for allowing a "finder" to steal part of an operating system.

Third, the Commission should adopt explicit procedures to protect the rights of licensees under the Communications Act. *See* BellSouth at 5, Appendix 2 at 28; NewVector at 6, Appendix 1 at 25. Those procedures should include:

1. Notice to the licensee that a finder's application has been filed, including a requirement that the finder serve a copy of its application on the licensee;
2. An opportunity for the licensee to respond to the application;
3. Grant of the finder's application if, and only if, after thorough investigation the Commission determines:
 - a. The licensee has not constructed the transmitting facilities;
 - b. The facilities are not connected to the landline network; or
 - c. The facilities are not capable of providing service on the relevant channels.⁸
4. A provision requiring any unsuccessful "finder" to reimburse the licensee for the costs it incurs in defending against the finder's application.⁹

By providing a review mechanism which reflects the realities of the market and deters abuse of the finder's preference, the Commission will be able to treat licensees fairly while still maintaining the watchdog benefits of this proposed rule.

Fourth, the Commission should clarify that the finder's preference does not apply to cellular frequencies unless a licensee is not providing any service to the public.

⁸ *See* BellSouth at 5, Appendix 2 at 28; NewVector at 6, Appendix 1 at 25.

⁹ Radiophone at 20.

See Centel at 5-6; McCaw at 19. The nature of cellular reuse schemes is such that not all frequencies will be used at all times. Moreover, the Commission's cellular rules specifically contemplate a five-year growth period within a market. Therefore, the Commission should clarify that the finder's preference does not apply to cellular unless the licensee is not providing service within its market.

Proposed Section 22.325

The Commission Should Allow Remote Monitoring Of Facilities.

The Commission proposes that a licensee must have a person on duty at each control point at all times in the event it is necessary to disable the transmitters at that facility. This proposed rule conflicts with Commission Staff's existing position that physical presence is not critical at each and every control point. Rather, the Staff has permitted licensees to remotely monitor facilities as long as (1) there are mechanisms in place which can easily and quickly turn off transmitters and (2) the facilities are monitored by an on-call person at a central control point. *See McCaw* at 24. This procedure represents an efficient use of technology and personnel. The Commission should clarify its proposal to authorize remote monitoring.

Proposed Section 22.365

The Commission Should Defer To The FAA's Tower Lighting And Marking Rules.

The Commission's rule regarding tower lighting and marking specifications is inefficient in light of the Commission's shared jurisdiction with the FAA. *See* GTE at 21. Applicants proposing to construct and operate a new tower must receive approval from the FAA before the tower is constructed. Thus, an applicant has specific instructions from the FAA that it must carry out during the construction process. The FCC, in contrast, specifies tower marking and lighting requirements after construction of the facilities. At that point, any modifications are several months too late, and are difficult and costly to implement.

Therefore, the Commission should defer to the FAA's lighting and marking regulations. *See* GTE at 22 n.12. The Commission should simply cross-reference the FAA's lighting and marking regulations in its regulations. Thus, when the FAA designates the lighting and marking requirements, licensees will be able to follow those instructions without the risk of incurring the cost of subsequent modifications.

Proposed Section 22.507

The Commission Should Allow Licensees To Use Multi-Frequency Transmitters.

The Commission proposes to ban the use of multi-frequency transmitters. The Commission views these transmitters as spectrally inefficient and believes that they encourage warehousing. This proposal ignores legitimate uses of multi-frequency transmitters. In many instances, single frequency transmitters would waste a licensee's resources. Therefore, the Commission should not adopt the proposed ban.

The ban on multi-frequency transmitters would cause substantial inefficiencies in rural or new markets. The demand in these markets may not be great enough to make a single frequency transmitter cost effective. Multi-frequency transmitters are an economical solution. See Arthur K. Peters at 16; PageNet at 21-22; BellSouth at 21. Requiring a separate transmitter would have one of two effects: It will either deprive service to rural and other low load areas because it is too costly or it will force customers to pay substantially higher rates.¹⁰

Certain parties attempt to provide a middle ground whereby licensees would be required to phase-out the use of multiple frequency transmitters after a system is operating for three years. See Commenting Parties at 32. The Commission should not adopt this proposal. At some point in a market's development, multiple frequency transmitters may no longer be appropriate or necessary. That is not guaranteed. In

¹⁰ In that regard, it would cost the paging industry millions of dollars to replace all of their multi-frequency transmitters. At a minimum, the Commission should "grandfather" all existing multi-frequency transmitters.

some markets the economics may never justify a single-frequency transmitter. Therefore, the Commission should not adopt the phase-out proposal.

Proposed Section 22.509

The Commission Should Modify Its First-Come, First-Served Proposal To Allow Existing Licensees To Compete For Frequencies.

The Commission proposes to eliminate its existing lottery system and grant licenses on a first-come, first-served basis. While the Commission's goal in eliminating lotteries is to decrease speculation, the proposed rule could have the opposite effect.

One possible outcome is that the Commission's proposal will result in a hoard of pre-mature applications. A first-come, first-served process would effectively create a one-day filing window for all unlicensed frequencies. That one-day window would be the day the new rules go into effect. As the Commission experienced with a one-day filing window for land mobile service at 220 MHz, speculators are able to file a huge number of applications in one day (more than 59,000 filed for land mobile service). Thus, the Commission's proposal could exacerbate the speculation problem inherent in the existing lottery system.

If speculators do not apply for frequencies on day one, licensees will be compelled to file applications as soon as practicable -- often prematurely -- to expand their systems. Licensees cannot risk losing their expansion capability. Under the Commission's proposal, licensees will lose that capability as soon as an applicant applies for a license. *See Telocator at 7; BellSouth at 3, McCaw at 27.*

Finally, the Commission's proposal would guarantee an increase in petitions to deny against applicants. This will be the only method existing licensees will have available to preserve expansion capability. *See Telocator at 7.* Therefore, the

Commission should either not adopt its proposal or modify it to give existing licensees an opportunity to file mutually exclusive applications.

If the Commission retains its first-come, first-served proposal, it should allow existing licensees to file mutually exclusive applications against any applications filed within 40 miles of an authorized station. *See NewVector* at 4.¹¹ The licensee would have 30 days to file a mutually exclusive application, which corresponds to the existing time period for filing a petition to deny. *See McCaw* at 28.¹² If the adjacent licensee files, it must demonstrate a competitive business plan, thus eliminating the possibility that the licensee is simply trying to block a bona fide competitor. The Commission could then submit these applications to a lottery. *See NewVector* at 4.¹³ This proposal would eliminate some of the speculation inherent in the 60-day filing window, while giving licensees a legitimate opportunity to expand their systems.

¹¹ BellSouth's proposal to accept applications from co-channel licensees within 250 km (150 miles) is overly broad. *BellSouth* at 3. That range is broader than the existing geographic market definition of 40 miles, and may encourage defensive filings with no supporting business plan.

¹² Southwestern Bell's proposal of allowing any entity to file a mutually exclusive application during a 30-day filing window will not solve the speculation problem.

¹³ In the alternative, the Commission could determine whether the initial licensee would be harmed by having its license granted on a frequency other than the one applied for. As long as there is no harm to that licensee, the Commission should facilitate regionalization of service by allowing the adjacent licensee to expand its system on the same frequency. *See Commenting Parties* at 23.

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Proposed Section 22.539

The Commission Should Allow Licensees To Have Multiple Paging Applications Pending Simultaneously In A Market.

The Commission proposes that a licensee cannot apply for a new paging channel until all previously approved channels are in service to the public, and the Commission is notified of that service. The Commission should not adopt this proposal.

Licensees need substantial flexibility to provide service to the public. As a result, a regional licensee may have many applications pending simultaneously. For example, a licensee may operate multiple frequencies from a single transmitter site. If the licensee needs to move to a new site, the Commission's rule would require the licensee to move one frequency at a time. This would be inefficient. Similarly, licensees are constantly adjusting their systems to improve service to the public. The Commission's proposal would undermine this flexibility and degrade the quality of service.

In addition, this proposal will substantially increase licensees' and the Commission's paperwork. When a licensee applies for a new channel it must demonstrate to the Commission that all prior facilities are in service. Since the Commission's records are at times incomplete, the licensee will have to attach all recent Form 489s. This will substantially increase application length and costs to licensees.

Proposed Section 22.901

Elimination Of The Restriction On Cellular Provision Of Fixed Incidental Services Will Not Impede Legitimate State Authority Over Auxiliary Services.

One of the Commission's principal goals in this proceeding is to give licensees flexibility in providing mobile services. In that regard, the Commission proposes to eliminate the restriction in existing Section 22.930 of the Rules which precludes provision of fixed incidental services (other than BETRS) without a waiver.

The United States Telephone Association (USTA) opposes this revision on the grounds that it will infringe on the authority of state commissions. USTA at 6-7. Nothing in the Commission's proposed revision impedes any proper exercise of authority by a state commission. The proposed rule simply removes the prohibition on fixed incidental services -- which the Commission has regularly waived. Finally, the Commission specifically noted that "[c]arriers desiring to provide an incidental fixed service must comply with state certification requirements, if any." *NPRM*, 7 FCC Rcd at 3672.

Proposed Section 22.901(d)

The Commission Should Not Require Prior Notification For Implementation Of Auxiliary Services Or Alternative Technologies.

The Commission proposes that licensees must provide the Commission with thirty days notice prior to implementation of any alternative technology or auxiliary service. The Commission should not adopt this proposal for several reasons. First, this restriction is unduly burdensome on licensees. Licensees will often desire to provide auxiliary services in response to unexpected market changes. There is no public interest justification for requiring licensees to wait for thirty days to provide service to the public.

Second, since this is a 489 notification filing, it should be made like all other such filings -- 15 days after implementation of that service. The provision of auxiliary services or the use of alternative technologies will not be the subject of notice and an opportunity to comment.

Proposed Section 22.903

The Commission Should Eliminate The Structural Separation Requirement On BOC Provision Of Cellular Service.

The Commission proposes to retain its existing rule that Bell Operating Companies may only provide cellular service through a fully separate subsidiary. In light of recent developments in the local exchange market and the pending licensing of PCS, the Commission should remove the BOC structural separation requirements.

First, the Commission has stated that it expects Personal Communications Service (PCS) to be "highly competitive" with cellular service.¹⁴ In order for the Commission to create meaningful competition, the rules must not be skewed in favor of some competitors over others. The Commission does not propose that landline carriers holding PCS licenses must have structurally separate subsidiaries. The Commission should level the playing field for BOC cellular providers by eliminating the structural separation requirements.

Second, structural separation imposes substantial costs on the BOCs and the consumers they serve. They must maintain entirely separate organizations which prevent them from taking advantage of economies of scale and scope. PCS competitors will not have to incur these costs and thus, will have a competitive advantage.

¹⁴ Amendment of the Commission's Rules To Establish New Personal Communications Service, Docket No. 90-314, Notice of Proposed Rule Making, at 37 ¶ 94 (rel. Aug. 14, 1992).

Third, structural separation is no longer necessary. Structural separation is designed to protect BOC customers of regulated (non-competitive) businesses from subsidizing the costs of non-regulated (competitive) businesses. The risk of cross-subsidization has been substantially limited, however, by the competitive entry of alternative local exchange carriers. In the event a BOC were to attempt to cross-subsidize, it would be a substantially less effective competitor in local exchange markets.

Fourth, non-structural safeguards are more than adequate to protect against the reduced possibility of cross-subsidization. Open network architecture, accounting safeguards and filing requirements will give customers, competitors and the Commission all the necessary information to monitor compliance with the Commission's cost allocation rules.

These arguments will be more fully developed in Ameritech Corporation's comments in the Commission's PCS docket (to be filed November 9, 1992). In light of these developments, the Commission should eliminate the separate subsidiary requirements included in Section 22.903 of the Commission's rules.

**The Commission Should
Correct Ameritech's Corporate Name.**

In the event the Commission retains Section 22.903 of its proposed rules, AMCI respectfully requests that the Commission make a technical correction. In 1991, "Ameritech Information Technologies Corporation" changed its name to "Ameritech Corporation". The Commission should modify Section 22.903 to reflect this change.

Proposed Section 22.913(b)

The Commission Should Waive The Proposed Height And Power Limitations In The Event The Licensee Has Consent From Neighboring Systems.

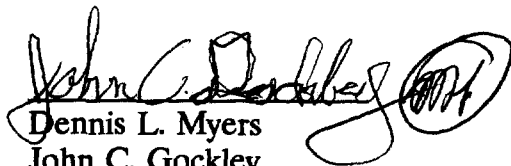
The Commission proposes to limit antenna height or the ERP of cellular base stations such that a station's contour does not exceed 26 miles. CTIA proposed that the Commission retain its existing rule providing for an automatic waiver in the event the licensee receives consent from its neighboring systems. *See, e.g.*, CTIA at 7. This rule gives licensees substantial flexibility to maximize efficiencies while protecting the interests of neighboring licensees. The Commission should restore this automatic waiver.

CONCLUSION

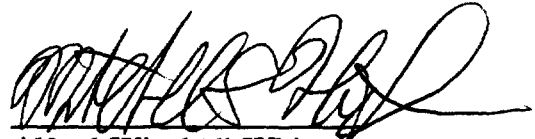
Many of the proposals contained in the Commission's proposed rulemaking will facilitate the timely and efficient provision of service to the public. They will streamline the Commission's licensing process while giving customers flexibility in providing service. The modifications suggested herein will further those goals. Therefore, AMCI respectfully requests that the Commission adopt the modifications discussed above.

Respectfully submitted,

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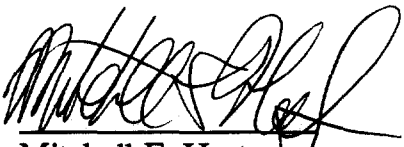
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November 5, 1992

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of November, 1992, a copy of the foregoing "Reply Comments of Ameritech Mobile Communications, Inc." was served by first class United States mail, postage prepaid on the parties of record on the attached Service List.


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